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FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5094

DATE COMPLAINT FILED: September 12, 2000

DATE OF NOTIFICATION: September 19, 2000

DATE ACTIVATED: January 26, 2001

EXPIRATION OF STATUTE OF

LIMITATIONS: September 12, 2005

STAFF MEMBER: Kamau Philbert

COMPLAINANT: Michael J. Broder

RESPONDENTS: Bill McCollum
Bill McCollum for US Senate
and Richard L. Pilhorn, as Treasurer
McCollum Victory Committee
and D. Jan McBride, as Treasurer
National Republican Senatorial Committee
and Stan Huckaby, as Treasurer
Republican Party of Florida
and Paul J. Bedinghaus, as Treasurer
John Thrasher

RELEVANT STATUTES: 2 U.S.C. § 441b(a)
2 U.S.C. § 433
11 C.F.R. § 102.17

INTERNAL REPORTS CHECKED: Federal Election Commission Indices and Database

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Michael J. Broder, who alleged that the Republican Party of Florida raised corporate contributions directly to benefit the Senate

1 campaign of former U.S. Representative Bill McCollum, a candidate in Florida's Eighth
2 Congressional District¹

3 This Office received responses from all respondents, who are represented by the same
4 attorney.²

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. Complaint**

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8 According to the complaint, a September 8, 2000 article in the Miami Herald newspaper
9 reported that former Florida House Speaker John Thrasher, as agent of McCollum, sent out an
10 invitation that billed a \$20,000-per-ticket fundraising luncheon as a "benefit for the U.S. Senate
11 campaign of U.S. Rep. Bill McCollum." The article also reported that the state political party
12 would maintain corporate money earmarked for McCollum. According to the complaint, the
13 luncheon was scheduled for September 22, 2000. The complaint did not provide either a copy of
14 the newspaper article or the luncheon invitation.

15 This Office obtained a copy of the newspaper article, which tracks the information
16 contained in the complaint. See Mark Silva et al. *Republicans Collect Funds from Corporations*
17 *for Florida Candidates*, Miami Herald, September 8, 2000. According to the article, the
18 luncheon featured former President George Bush. The article also reported that, although the
19 state party said that the proceeds would benefit all its candidates in Florida, the invitation issued
20 by Thrasher billed the luncheon as a benefit for McCollum's U.S. Senate campaign. The article
21 included a quote from Don Simon, General Counsel for Common Cause, a public interest group,

¹ McCollum lost the general election with 46 percent (46%) of the vote to Bill Nelson

² McCollum Victory Committee and the National Republican Senatorial Committee were not made respondents at the time of the complaint

1 stating that "[t]he most revealing thing about this invitation is the stark admission that a
2 corporate contribution is intended to help McCollum." The article also concluded that by
3 collecting checks for the state party -- unlimited by law in what it can raise -- the state party
4 effectively was bypassing federal limits that prohibit corporate contributions to Senate candidates
5 and restrict to \$2,000 the amount that an individual can donate to McCollum's Senate campaign.

6 According to the article, McCollum and the Republican Party maintained that the
7 corporate money would not be earmarked for McCollum alone -- although it was acknowledged
8 that McCollum would benefit, "no question about it." The article further quoted McCollum as
9 stating "I'm fighting fire with fire. I'm not going to campaign with one hand tied behind my back
10 . . . If Bill Nelson weren't doing this, I wouldn't be doing this." The article reported that both
11 candidates have created separate federal "victory committees" in addition to their own Senate
12 campaigns or any party fundraising, enabling donors to write big checks -- a trend in high-stakes
13 Senate races. Finally, the article reported that McCollum stated that he would collect \$1,000
14 checks for his own Senate campaign and personal donations up to \$20,000 for his victory
15 committee. In addition, he would "net" corporate checks of \$20,000 for the state party's use.

16 **B. Response**

17 Counsel submitted substantially identical responses to the complaint for each respondent.
18 The responses noted that the complaint did not cite any evidence that corporate funds were used
19 in connection with a federal election or that corporate funds were deposited into a federal
20 account. Counsel asserts that the Federal Election Campaign Act of 1971, as amended ("the
21 Act") and Commission regulations do not prohibit a candidate for federal office from raising
22 federal contributions and non-federal donations for their state party committee. Counsel further
23 asserts that the Commission's regulations at 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(a)(1) permit

1 state party committees to raise federal funds for their federal account and non-federal funds for
2 their non-federal account for generic party building activities that benefit the entire Republican
3 ticket, including both federal and non-federal candidates. Counsel states that the fund-raiser at
4 issue raised federal and non-federal funds within the applicable federal and state limits and that
5 funds raised for the state party committee were not earmarked for any candidate. Counsel further
6 states that, as Speaker of the Florida House, respondent Thrasher raises corporate funds for the
7 state party committee, as permitted by Florida law. Counsel asserted that no corporate
8 contributions were deposited into McCollum's Senate campaign account and there is no evidence
9 showing that non-federal funds were spent on behalf of a federal campaign. According to
10 counsel, all corporate contributions raised at the event were deposited into the state party
11 committee's non-federal account and spent pursuant to Florida law.³ Therefore, counsel asserts
12 that the Commission should dismiss the complaint and take no further action against the
13 respondents.

14 **C. Additional Information From Public Sources**

15 Review of the Commission's indices and database shows that between September and
16 December 2000 McCollum's Senate committee received a total of \$25,708 in transfers from the
17 McCollum Victory Committee ("Victory Committee"), a joint fundraising committee authorized

³ Respondents neither described the state party's involvement in the event nor provided documents or information regarding the asserted corporate funds

1 by McCollum's Senate committee.⁴ The 2000 October Quarterly Report, Schedule A, for
 2 McCollum's Senate committee shows receipt of a \$5,000 transfer from the Victory Committee
 3 on September 29, 2000. An attached memo schedule shows that the \$5,000 transfer consisted of
 4 nine individual contributions ranging from \$250 to \$1,000. The committee's Year End Report,
 5 Schedule A, also disclosed receipt of an additional transfer of \$20,708 from the Victory
 6 Committee to McCollum's Senate committee on December 19, 2000. The memo schedule for
 7 those contributions shows that the transfer consisted of 24 individual contributions ranging from
 8 \$100 to \$1,000 and a \$1,000 contribution from a limited liability company (LLC).

9 According to the Victory Committee's 2000 October Quarterly Report, Schedule A, it
 10 received \$197,550 in contributions from individuals from what appears to be the September 22,
 11 2000 fund-raiser mentioned in the complaint.⁵ The bulk of these contributions was in amounts of
 12 \$5,000 to \$20,000 and was from corporate executives and their families, and self-employed or
 13 retired individuals.⁶ The committee received another \$10,000 (\$5,000 each) from two political
 14 action committees (PACs). In addition to the \$5,000 transfer from the Victory Committee to
 15 McCollum's Senate committee, \$182,000 was transferred to the NRSC's federal account on

⁴ Commission records show that the Victory Committee was established on August 8, 2000 as a joint fundraising committee in participation with McCollum's Senate committee and the National Republican Senatorial Committee ("NRSC") On February 9, 2001, the Victory Committee submitted a Termination Report to the Commission's Reports and Analysis Division ("RAD") requesting to terminate operations According to the Termination Report, the committee transferred all of its cash on hand (\$69,193) to the NRSC on February 8, 2001 On April 13, 2001, RAD advised the committee that its termination was accepted and it was no longer required to file periodic reports with the Commission

⁵ Specific information regarding the fund-raiser has not been provided However, the Victory Committee reported disbursements of \$1,332.91 for food and beverages at the Wyndham Hotel the day before the fund-raiser at issue, indicating the occurrence of such an event

⁶ Employer or occupation information was missing for some contributors

1 September 28, 2000. The Victory Committee's 2000 Year End Report, Schedule B, shows the
2 additional transfer of \$20,708 to McCollum's Senate committee on December 19, 2000.⁷

3 The NRSC's 2000 October Monthly Report, Schedule A, shows receipt of the \$182,000
4 transfer from the Victory Committee on September 29, 2000. It also showed a transfer of
5 \$257,700 in federal funds to the Republican Party of Florida on September 19, 2000 and a
6 \$1,000 earmarked contribution to McCollum's campaign on September 6, 2000. A further
7 review of Schedule I of the NRSC's report shows the receipt of transfers of non-federal funds
8 from several other "victory committees" during September, 2000 but none from the McCollum
9 Victory Committee.⁸

10 **D. Law**

11 Section 441b(a) of the Act prohibits corporations from making contributions or
12 expenditures in connection with a Federal election and prohibits a political committee from
13 knowingly accepting or receiving corporate contributions. 2 U.S.C. § 441b(a). This broad
14 prohibition extends to "anything of value" given to any candidate or campaign in connection with
15 any Federal election. 2 U.S.C. § 441b(b)(2).

16 The Act also provides that each authorized campaign committee shall file a statement of
17 organization no later than 10 days after being designated as such. All other committees shall file
18 a statement of organization within 10 days after becoming a political committee. 2 U.S.C.
19 § 433(a). Among other items, the statement of organization shall include the name, address,
20 relationship, and type of any connected organization or affiliated committee. 2 U.S.C. § 433(b)

⁷ A review of the available reports shows no receipt or transfer of federal or nonfederal funds from the Victory Committee to the state party

⁸ As a result, it is unclear how the state party came to receive the asserted corporate funds from the event

As pertinent herein, the Commission's joint fundraising regulations at 11 C.F.R. § 102.17(c)(1) require that the participants in a joint fundraising activity enter into a written agreement, which shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

The regulations also provide that a joint fundraising notice shall be included with every solicitation for contributions. 11 C.F.R. § 102.17(c)(2). The notice shall include the names of all participating committees; the allocation formula to be used; a notice that, notwithstanding the stated allocation formula, contributors may designate their contributions for a particular participant(s); and a notice that the allocation formula may change if a contributor makes a contribution which would exceed the amount that a contributor may give to any participant. 11 C.F.R. § 102.17(c)(2)(i). The notice also requires that, if one or more participants can lawfully accept contributions that are prohibited under the Act, a statement informing contributors that contributions from prohibited sources will be distributed only to those participants that can accept them. 11 C.F.R. § 102.17(c)(2)(ii).

11 C.F.R. § 102.17(c)(3)(i) provides that the participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under the Act. Each political committee shall amend its Statement of

1 Organization to reflect the account as an additional depository.⁹ If one or more participants can
2 lawfully accept contributions that are prohibited under the Act, the participants may either
3 establish a second depository account for contributions received from prohibited sources or they
4 may forward such contributions directly to the nonfederal participants.

5 The regulations further provide that the fundraising representative shall also keep a record
6 of the total amount of contributions received from prohibited sources, if any, and of all transfers
7 of prohibited contributions to participants that can accept them. 11 CFR § 102.17(c)(4)(ii).

8 Finally, the fundraising representative shall report all funds received in the reporting period in
9 which they are received. The fundraising representative shall report the total amount of
10 contributions received from prohibited sources during the reporting period, if any, as a memo
11 entry. Each Schedule A filed by the fundraising representative under this section shall clearly
12 indicate that the contributions reported on that schedule represent joint fundraising proceeds.
13 11 CFR § 102.17(c)(8)(i)(A).

14 **E. Analysis**

15 As set forth above, the complaint alleges that McCollum and the state party violated
16 2 U.S.C. § 441b(a) by raising illegal corporate contributions in amounts of \$20,000 directly to
17 benefit McCollum's U.S. Senate campaign. The complaint did not include the relevant invitation
18 from Thrasher, the joint fundraising agreement showing the formula for distribution of the funds
19 raised by the Victory Committee, nor any information showing receipt of the alleged corporate

⁹ According to Commission records, both the NRSC and McCollum's Senate committee amended their Statement of Organization on August 8 and 9, 2000, respectively, to reflect the Victory Committee as an additional depository

1 contributions.¹⁰ A review of reports filed with the Commission does not reveal receipt of
2 corporate funds by any of the relevant federal committees from the event in question. As stated
3 above, those reports show only transfers of federal funds among the committees - two transfers
4 of federal funds (\$5,000 and \$20,708) from the Victory Committee to McCollum's Senate
5 committee, one transfer of federal funds (\$182,000) from the Victory Committee to the NRSC,
6 and the transfer of federal funds (\$257,700) from the NRSC to the state party on September 19,
7 2000. Based on the memo schedules attached to the reports, the transfers to McCollum's Senate
8 committee and to the NRSC appear to consist of contributions from individuals and to be within
9 the contribution limits set forth in the Act. Although the sources of the September 19 transfer
10 from the NRSC to the state party are not discernible from the reports, the funds appear to be from
11 the NRSC's cash on hand in its federal account.

12 Notwithstanding the reports, respondents acknowledge that the September 22, 2000 fund-
13 raiser raised both federal and non-federal funds. They assert that all corporate funds raised were
14 deposited into the state party's non-federal account and spent pursuant to Florida law.¹¹
15 However, as respondents neither described the state party's involvement in the fund-raiser nor
16 provided pertinent information regarding the asserted corporate contributions, it is unclear how,

¹⁰ This Office recognizes that, without the actual invitation and other pertinent information, it is uncertain whether the event was a joint fund-raiser or subject to the Commission's joint fundraising regulations. However, as the Victory Committee was established as a joint fundraising committee and appears to have participated in the September 22, 2000 luncheon addressed in the complaint, this Office believes that the activity is properly analyzed under those regulations.

¹¹ A review of the state party reports on the Florida Department of State website shows receipt of a total of 13 contributions during the month of September 2000 in the \$20,000 amount alleged in the complaint. Six of those contributions were from corporations, an additional six were from individuals and one from the Republican National State Election Commission. Four of the corporate contributions preceded the September 22, 2000 fund-raiser at issue. Nevertheless, it is unclear whether these contributions resulted from the event in question or are the ones to which the state party refer.

1 legally or factually, the state party came to receive a share of the proceeds of the fund-raiser
 2 when it does not appear as a participant in the joint fundraising activity. Legally, the Victory
 3 Committee's Statement of Organization shows only McCollum's Senate committee and the
 4 NRSC as participants, and under 11 C.F.R. § 102.17(c)(3)(i) only joint fundraising participants
 5 may receive non-federal proceeds from joint fundraising activity.¹² Factually, the available
 6 information does not show any transfer of non-federal funds from the Victory Committee or the
 7 NRSC to the state party during the relevant period.

8 In addition to the restriction of joint fundraising proceeds to the joint fundraising
 9 participants, under 11 CFR § 102.17(c)(4)(ii) the Victory Committee is required to keep a record
 10 of the total amount of contributions received from prohibited sources, if any, and of all transfers
 11 of prohibited contributions to participants that can accept them. More importantly, under
 12 11 CFR § 102.17(c)(8)(i)(A), the Victory Committee is also required to report the total amount
 13 of contributions received from prohibited sources during the reporting period, if any, as a memo
 14 entry. It does not appear that the Victory Committee reported receipt of any corporate
 15 contributions. Therefore, it appears that the Victory Committee did not comply with the
 16 Commission's joint fundraising regulations.¹³ In addition, by failing to include the state party on
 17 its Statement of Organization as a participant in the joint fundraising activity, the Victory
 18 Committee may have violated 2 U.S.C. § 433(b)(2).

¹² Contrary to counsel's assertions, the fact that the state party generally can lawfully raise both federal and non-federal funds under 11 CFR § 102.15(a)(1)(i), would not necessarily allow it to receive corporate contributions from the joint fundraising activity at issue

¹³ In addition to the procedures already discussed, the regulations also require certain information to be included in the joint fundraising notice. See 11 CFR § 102.17(c)(2). Without the relevant invitation, it is unclear whether the requisite information was included and whether the Victory Committee complied with the notice requirements

As previously mentioned, the Commission's regulations provide for receipt of non-federal funds and specify the procedure for their receipt. Those regulations provide that if one or more participants can lawfully accept non-federal contributions, the participants may either establish a second depository account for contributions received from prohibited sources or they may forward such contributions directly to the nonfederal participant(s). See 11 CFR § 102.17(c)(3)(i) (emphasis added). The available information indicates that corporate funds were forwarded directly to the state party improperly. Since it does not appear that the NRSC, as the only participant lawfully permitted to accept non-federal funds, established a separate depository account to receive non-federal funds, the available information suggests that the parties elected to forward non-federal funds directly to the state party without disclosing it as a participant on the Victory Committee's Statement of Organization. Therefore, it appears that the NRSC did not comply with the above provision of the joint fundraising regulations and appear to have violated 11 CFR § 102.17(c)(3)(i).¹⁴ In addition, by failing to include the state party as a participant in the Victory Committee's Statement of Organization, the NRSC appears to have violated 2 U.S.C. § 433(b)(2).¹⁵

¹⁴ As McCollum's Senate committee cannot lawfully accept nonfederal funds, this Office construes the regulations as inapplicable to that committee

¹⁵ This Office notes that generally it has not recommended that the Commission make findings against joint fundraising participants individually for this type of violation. However, as the Victory Committee has terminated operations, this Office believes that it is appropriate to make the above recommendations. This Office also believes that the recommendations are legally supportable since the regulations impose responsibility on participants specifically to establish an appropriate depository to receive non-federal funds, and the instant participants appear to have ignored those regulations. It is also noteworthy that the NRSC has since inherited Victory Committee personnel. As of February 1, 2001, simultaneous with the Victory Committee's request for termination, its treasurer, D. Jan McBride, became Assistant Treasurer of the NRSC, the major participant of the Victory Committee. In addition, the NRSC received the bulk of the federal funds raised by the Victory Committee, including its last \$69,000 immediately prior to termination.

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1 By receiving the corporate proceeds from the joint fundraising activity when it was not
2 disclosed as a participant on the Victory Committee's Statement of Organization, the state party
3 may also have violated the Commission's joint fundraising regulations at 11 C.F.R. § 102.17(c).

4 Therefore, this Office recommends that the Commission commence an investigation in
5 this matter and find reason to believe that the McCollum Victory Committee and D. Jan
6 McBride, as Treasurer, and the National Republican Senatorial Committee and Stan' Huckaby, as
7 Treasurer, violated 2 U.S.C. § 433(b)(2) and 11 C.F.R. § 102.17(c); and that the Republican
8 Party of Florida (nonfederal account) and Paul J. Bedinghaus, as Treasurer, violated 11 C.F.R.
9 § 102.17(c).

10 Based on the above discussion, this Office makes no recommendation regarding Bill
11 McCollum; Bill McCollum for US Senate and Richard L. Pilhorn, as Treasurer, or John Thrasher
12 at this time.

13 **III. PROPOSED DISCOVERY**

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¹⁷ One potentially questionable use of the corporate funds from the joint fund-raiser could be coordinated advertisements paid for by the state party on behalf of McCollum's U S Senate campaign. However, this Office was unable to find any such advertisements at this time.

IV. RECOMMENDATIONS

1. Find reason to believe that McCollum Victory Committee and D. Jan McBride, as Treasurer, and National Republican Senatorial Committee and Stan Huckaby, as Treasurer, violated 2 U.S.C. § 433(b)(2) and 11 C.F.R. § 102.17(c).
2. Find reason to believe that the Republican Party of Florida (nonfederal account) and Paul J. Bedinghaus, as Treasurer, violated 11 C.F.R. § 102 17(c).
3. Approve the attached Factual and Legal Analyses.
4. Approve the attached interrogatories and document subpoenas.
5. Approve the appropriate letters

Date

9/13/01

Lois G. Lerner by AAS
Lois G. Lerner
Acting General Counsel

Attachments

1. Factual and Legal Analyses
2. Interrogatories and Document Subpoenas

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